CIVIL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LOUISIANA

GLORIA SCOTT AND *
DEANIA JACKSON *
* NO. 96-8461
VERSUS * DIVISION "I"
* SECTION 14
THE AMERICAN TOBACCO *
COMPANY, INC., ET AL. *
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Transcript of proceedings before The Honorable Richard J. Ganucheau, Judge Pro Tempore, Civil District Court, Parish of Orleans, State of Louisiana, 421 Loyola Avenue, New Orleans, Louisiana 70112, commencing on June 18, 2001.

* * * * *
Tuesday Afternoon Session
June 24, 2003
1:25 p.m.
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P R O C E E D I N G S

(In open court, outside the presence of the jury:)

THE MINUTE CLERK:

All rise, please. Recess is over. Court will come to order. Please be seated.

THE COURT:

I indicated that we would come back a little early so I could rule on the exhibits. I have already ruled that Exhibits AN-222, AZS-350, 351, 352, 353, 358 and 359 objected to, those objections are sustained,

they will not be received into evidence.
Exhibit LR-215, objected to, the objection is sustained, it will not be received in evidence.
LR-232, objected to, the objection is overruled, that exhibit will be received in evidence.
Exhibit SA-61, objected to, the objection is overruled, the exhibit will be received in evidence.
Exhibit SA-98, objected to, the objection is sustained, the exhibit will not be received into evidence.
Are the defendants ready to call their next witness, please?
MR. WILLIAMS:
Yes, we are, Your Honor. Two minutes.
THE COURT:
And the witness will be?
MR. WILLIAMS:

Dr. Donald B. Louria.
THE COURT:
All right. I have summoned the jury, but I note that it's not quite 1:30. We will recess until the jury is ready to come into the courtroom --
MR. WILLIAMS:
Thank you, Your Honor.
THE COURT:
-- which should be fairly shortly.
On another issue, are the difficulties with the deposition that's going to be read resolved?
MR. LONG:
Kevin.
MR. BOYCE:
Oh, I'm sorry. Your Honor, we will not be playing or reading the Daryl Jackson deposition. We're going to proceed with Dr. Louria.
THE COURT:
Does that mean you will not use it at all?
MR. BOYCE:
We will not use it at all based on Your Honor's ruling this morning. We looked at it at lunch and decided not to use it at all.
We will have a proffer that we will submit, a written proffer that we will submit later this week that some of the material we would have covered that Your Honor ruled we couldn't. And we will submit that later.

But we are not going to read it to the jury. We can proceed with Dr. Louria.
THE COURT:
Well, I suggest you discuss that with the opposition --

MR. BOYCE:
Okay.
THE COURT:
-- to determine if there are any objections to that procedure.
MR. BOYCE:
I will.
THE COURT:
Anything else?
MR. LONG:
Yes, Your Honor.
We're going to look at the record on this. But on the issue of admissibility of documents, it seems to me that there's kind of a different approach being applied now than in the plaintiffs' case.
In the plaintiffs' case when they wanted to put documents in without a witness, we objected. That's one issue.
Secondly, in terms of authenticity, pleadings of that nature, in the plaintiffs' case, they put forth a lot of company documents. I don't think most of us in this courtroom had personal knowledge as to whether they're business records or not.
But our approach was that if we had a good-faith basis for challenging authenticity

or challenging whether it was a business record, we did; but if it appeared on the face of the document, which are on the Internet and available to everybody, that it appeared to be what it probably was and we had no reason to think otherwise, it came in.
Now it seems we're faced with a situation that if we can't muster a witness to authenticate all these documents to say they're business records, we can't put them in in our case.
And what we're looking for, also, is admonitions by the Special Master when we were discussing all these document issues, to get these things resolved that The Court didn't want to have a high barrier upon authenticity, on hearsay issues. But we'll look for that information in the conference with the Special Master.
But I just wanted to state on the record that, as officers of The Court, we didn't object unless we thought there was a good-faith basis that it was not a business record, that it was not authentic, and it came in. And we thought that would make it a cleaner trial without having to dot every "I" and cross every "T."
MR. RUSS HERMAN:
I want to respond so the record is clear.
During the recess, we had occasion to check the objections that defendants have

repeatedly made during trial and in depo cuts to documents on the basis of foundation, authenticity, many of which were sustained. I think that a review of objections made or filed, particularly by Mr. Belasic, Ms. Bertaut and Mr. Muehlberger are particularly cogent. All that we have done is done what the code directs us to do. And that is to make objections when we feel things are objectionable.

I think that counsel's statement is not well-taken. And it's up to him to prepare or them to prepare their side of the case. And by not calling witnesses, by avoiding calling witnesses, they've put themselves in this situation.

THE COURT:

For the record, I ruled on exhibits individually as and when the exhibits were offered. If there was no objection to the authenticity or if the authenticity had been conceded in written pleadings prior to my having to rule, I took all that into consideration.

And I understand that many documents that could have been objected to on authenticity grounds weren't. But I ruled on them as and when the documents were presented after hearing the arguments and considering the document.

And my intention, certainly, was to apply the rules of the Code of Evidence to

the documents in connection with statements and stipulations of counsel. And I tried to be consistent throughout and apply the same rules to the circumstances as and when they arose.

When the jury is ready to come in -- We're still missing one juror. As soon as all the jurors are present, I will inform counsel and we'll bring the jurors into the courtroom.

Court will stand at recess until that time.

(Whereupon a brief recess was taken at this time from 1:32 o'clock p.m. to 1:39 o'clock p.m.)

THE BAILIFF:

All rise for the jury, please.

(Whereupon the jury joins the proceedings at this time.)

THE MINUTE CLERK:

All rise, please. Recess is over. Court will come to order. Please be seated.

THE COURT:

Good afternoon.

THE JURY:

Good afternoon.

THE COURT:
Next witness for the defense, please.
MR. WILLIAMS:
Yes, Your Honor. The defendants call
Dr. Donald F. Louria.
THE COURT:

Raise your right hand, please.
* * * * *
DONALD B. LOURIA, M.D., M.A.C.P.,
[DELETED]
after having been first duly sworn by
the Court, testified on his oath as follows:
* * * * *
THE COURT:
That microphone is on, sir. And if
you'd pull it a little closer and speak into
it, you won't have to raise your voice and
everyone will be able to hear you very well.
THE WITNESS:
Okay. Is that all right?
THE COURT:
That's perfect.
Mr. Williams, you may proceed.
MR. WILLIAMS:
Thank you, Your Honor.
Good afternoon, ladies and gentlemen.
THE JURY:
Good afternoon.
MR. WILLIAMS:
Good afternoon, Dr. Louria.
VOIR DIRE EXAMINATION
BY MR. WILLIAMS:
Q. Dr. Louria, tell us your full name and tell
us where you're from.
A. Donald B. Louria. I'm from the New Jersey
Medical School in North New Jersey.
Q. Well, welcome to sunny New Orleans. Did you
bring your raincoat?

A. Didn't do any good.
Q. I hear that.
Dr. Louria, do you have a family?
A. I do.
Q. Tell us about them. Do you have kids?
A. Three.
Q. Grandkids?
A. At last count, seven.
Q. And how old are you, Dr. Louria?
A. Seventy-four plus.
Q. Seventy-four plus.
Dr. Louria, tell us where you work.
A. I work at the New Jersey Medical School in
Newark, New Jersey.
Q. And what is your position there?
A. I'm Professor of Preventive Medicine and
Chairman Emeritus.
Q. You said Chairman Emeritus. You were
Chairman of the Preventive Medicine Department?

A. For about thirty years. And I stepped down, I guess it's about four years ago. And I'm still full-time there in the department as a professor.
Q. Okay. You mentioned preventive medicine. You were the Chairman of the Preventive Medicine Department and you're still a Professor of Preventive Medicine; is that right?
A. That's right.
Q. What is preventive medicine?
A. Well, it's very broad. It really is just what it says: It's anything that relates to improving or protecting health. So it would include infectious disease, drug abuse, screening, cancer, a

very large number of topics.
Anything that fits under the rubric of keeping people healthy or improving their health can be preventive medicine. So AIDS is in preventive medicine, we have a fairly substantial unit in nutrition.
Q. And I don't know if -- You said New Jersey. You're in Newark, New Jersey; is that right?
A. I'm in Newark, right.
Q. Okay. Now, preventive medicine, the screening, the specialty of -- the science of screening falls within the specialty of preventive medicine; is that right?
A. Sure, that's part of preventive medicine.
Q. And what is public health, Dr. Louria?
A. Just what it says. It is promoting or protecting the health of the public.
Q. And you're an epidemiologist, also; aren't you?
A. I am -- Yeah, I do a fair amount of epidemiology.
Q. And tell us what epidemiology is. We've heard that name come up in the trial, but tell us what it is.
A. Yeah. Basically, epidemiology is the study of disease and determinants of the disease, so risk factors, in populations, as contrasted to treating individuals.
Q. So you're studying groups of people?
A. That's right.
Q. And preventive medicine is about large groups of people?

A. Oh, it could be small groups of people. But it's about -- it's about groups.
Q. It's about groups?
A. Sure.
Q. Not individuals? Public health is about groups of people?
A. Well, now, wait a minute.
The answer is it's the study of groups, whether large or small. But in the implementation of the results of those studies, that could be done through individual doctors.
So in screening, for example, my wife just

had mammography and a Pap smear. Now, that's screening. And the recommendations for doing it come out of screening. But it's carried on -- carried out by individual physicians.

Q. Did you say that it was screening because she was asymptomatic? You said she had a mammogram and she had a Pap smear.

A. Sure.

But the recommendation is annual, annual mammogram and Pap smear. We do it every two years. And so that's what she does, but -- So it's done in conjunction with her own personal physician. But it's still screening.

Q. And screening because she's asymptomatic, which is a word we've heard a lot, meaning she has no symptoms --

A. That's right.

Q. -- of breast cancer and she has no symptoms of cervical cancer?

A. That's right.

Q. And that's why it's called screening? And that's what screening is all about? Is doing tests on asymptomatic people; is that right?

A. It's doing tests on asymptomatic people for one of two purposes: One is to detect a risk factor or a precursor to the disease and doing something about it then, that's called primary prevention; or it's to catch the disease itself so early that it's never allowed to develop fully.

So if I screened everybody in this courtroom for high blood pressure, the people who have it already have it, so you haven't prevented it. But if they're asymptomatic, so they don't have any problems from it, that they know of, then you can intervene and lower the blood pressure at that point. And that's secondary prevention. That is the result of screening recommendations.

Q. Well, you know why we're here. We're looking at the plaintiffs' tests.

A. I do.

Q. CT scans to screen for lung cancer?

A. That's right.

Q. Bladder cancer screening for -- Bladder tests for screening for bladder cancer?

A. Yes.

Q. Spirometry for COPD and stress electrocardiogram for coronary heart disease?

Those would be considered in this case secondary prevention; is that right?

A. Those would be considered secondary prevention.

Q. A little while ago --

A. Wait a minute.

Those would be considered secondary prevention if they worked and if they were documented. But, A., they're not, so --

Q. We're going to get into your opinions. I

just want to make sure we're clear on terms.
A. Yeah.
Q. We mentioned some terms earlier.
One was epidemiology, one was preventive medicine, and we mentioned public health, and we've talked about what screening is. And all those things go together; don't they?
A. Sure, they all go together.
Q. Tell us why.
A. That's right.
Q. Tell us why.
A. Well, they're all part of preventive medicine, after all. If you can prevent a disease entirely, that's marvelous. If you can catch it so early that it can't hurt somebody, that's not quite as good but it's still very good.
So, in a sense, that's the crux of one aspect of preventive medicine. That's not all of it. I mean, good nutrition, exercise, not being overweight, all those are equally important.
Q. And when we think about these things, we're thinking about it in terms of groups of people?
A. Well, no. No, not exactly. I mean, what you have to do to determine whether a test is any good is to test it out in proper fashion among groups of people. But once you've done that, of course, you then apply it to individuals.

Q. But, at the outset, we're talking about groups of people?
A. Oh, you -- I've never -- I've never heard of a screening test that could be -- a proper test that can be determined on individuals. You have to do it on groups. You have to do it with a group in which you do the screening and a group that is a control so you can see the difference and see whether it's worth anything. And then you apply it to individuals. Well, sometimes you can apply it to whole groups.
Q. I want to make sure we're clear on terms. We've been using the word "monitoring" here. Now, screening and monitoring are the same thing; aren't they?
A. As used in this trial, screening and monitoring are the same thing whether applied at the level of policy, which is, in part, what this trial is about, is establishing policy; or whether applied at the level of individual physicians and patients or participants. Right, we are talking about screening.
Q. Dr. Louria, let me change subjects with you briefly. Can cigarettes cause lung cancer?
A. Can cigarettes produce lung cancer? Yes.
Q. Can cigarettes produce bladder cancer?
A. Cigarettes are thought to be responsible for about 50 percent of bladder cancer.
Q. Can cigarettes, are they a risk factor for heart disease?
A. Absolutely. Among smokers, it accounts for about 20 percent of heart attacks.

Q. Can cigarettes produce COPD?
A. Cigarettes are about the only way you can get obstructive lung disease. Except for chronic asthma in a nonsmoker. But, yeah, cigarettes and heavy cigarette smoking is unequivocally the, the major reason for people getting obstructive lung disease.
Q. Dr. Louria, I'm going to offer you as an expert in the area of preventive medicine and public health with an emphasis on medical screening or medical monitoring because we want you to tell the jury your evaluation of the screening tests that the plaintiffs are asking for here.
Before I do that, I'd like to talk with you about your background that qualifies you as an expert to render those sorts of opinions, okay?
A. Yes.
Q. Let's start with your education.
Now, did you prepare some charts for us so we can -- that kind of summarize your background?
A. Yeah, there are charts that summarize my background.
MR. WILLIAMS:
Okay. Matt, I'd like to call up DDA-2105.
THE COURT:
Any objection?
MR. BRUNO:
No, Judge.
And we have no objection to any of the demonstratives that Mr. Williams has been using, so there will be no need to ask again.
MR. WILLIAMS:

Thank you, Mr. Bruno.
EXAMINATION BY MR. WILLIAMS:
Q. Dr. Louria, you went to Harvard?
A. Yeah, I read it. It says I went to Harvard. I did. This is a nice monitor. I wish I had something like this in my office. Yes, I went to Harvard.
Q. You went to Harvard times two and you graduated from Harvard Medical School?
A. I did.
Q. You're, I guess, you're experiencing an anniversary of sorts, in fact, a big anniversary. It was fifty years ago; wasn't it?
A. I'm afraid so. And we just did have the reunion, right.
Q. We've heard a lot of doctors testify, some Ph.D.s, some medical doctors, and I just want to be clear. You are, in fact, a medical doctor; isn't that right?
A. I am.
Q. And I don't think anyone has told us about what a medical education is like. You don't just go to school for four years after college? You have things like internships and a residency and that sort of thing. Tell us about how you become a doctor very quickly.

A. Well, you become a doctor by going to medical school, obviously. And then the amount of postgraduate training depends on the individual.

But, yeah, if you're going to see patients, you have to take what used to be called in the old days an internship; it's now called first year

residency. And then you take more training, and that's residency training. And then you can take fellowship training in specialized areas. And then, presumably, you're ready.

Q. When you're a resident, you're at a hospital? We see a lot of TV shows with doctors on it. Those are the young doctors running around studying under the older doctors? Is that what you kind of do as a resident?

A. Yeah, we never did anything you see on the television shows. But, yeah, you work very hard day and night and you spend your time clinically seeing patients in different rotations, sure.

Q. Let's look at your internships and residencies. I'd like to call up DDA-2129, Matt.

THE COURT:
You may publish it.
MR. WILLIAMS:
Thank you, Your Honor.

EXAMINATION BY MR. WILLIAMS:

Q. Now, you had an internship and a residency at New York Hospital, Dr. Louria; is that right?

A. That's correct.

Q. Were you treating patients at that time?

A. Oh, sure. That's what you do.

Q. Well, tell us what you were doing with those patients. Treating them for what?

A. Anything that came in in the field of internal medicine. When you're in the Emergency Room, you'd get a fair number that basically were surgical problems. But you see absolutely every, every kind of disease.

Q. Cancer? Heart disease?

A. Oh, of course. Of course.

Q. Infectious diseases?

A. Endocrine disease, heart disease, cancer, drug abuse. You name it, we would see it.

Q. And you did a residency at New York Hospital thereafter; is that right? After your internship?

A. I did an internship and then one year of residency. And then I went to the National Institutes of Health.

Q. And that's part of the federal government?

A. It is.

Q. Tell us what you did at the National Institutes of Health.

A. I was in the Institute of Allergy and Infectious Diseases. And I spent most of my time there focused on fungal disease. So it was primarily in infectious diseases for two years. So I actually spent a fair amount of time on the

neurology service because they happened to have one of the great neurologic teachers in the country at the time.
Q. And then you moved on to a research fellowship at Cornell Medical -- Cornell University Medical College in 1957 and 1958; is that right?
A. I did, indeed.
Q. Were you researching infectious diseases there? Treating patients?
A. Yeah, that was almost exclusively infectious disease. But that's a little bit overstating it because one of the reasons a lot of us like infectious diseases is that an awful lot of illness,

cancer, for example, presents with fever.
And so we'd see -- we'd see someone with obviously infections, pneumonias, but we'd see a lot of patients who came to the hospital and looked like infections but then turned out to have something else.
Q. And then you moved on to be head of infectious diseases at Bellevue Hospital?
A. Bellevue Hospital had three services: Cornell, that was mine; and Columbia; and New York University. And I was head on the -- on the Cornell service. But, actually, the Columbia service asked if I would handle their infectious diseases; and the resident staff on the NYU service asked if I would come there after hours and see their difficult cases.
Q. And you stayed there for twelve years and you ran the department; is that right?
A. Was it twelve years?
Q. I think it was.
A. Wow. I guess that's right.
Q. Time goes by when you're having fun; right?
A. I don't know if I was having fun, but time goes by.
Q. Doctor, where are you currently licensed to practice medicine?
A. Only in New Jersey.
Q. In New Jersey.
Now, we talked about your teaching briefly at the University of Medicine and Dentistry of New Jersey. You've also held some other teaching positions in medicine; haven't you?

A. Oh, you mean other affiliations?
Q. Yes. Like with Cornell University?
A. Yes. Well, Cornell University is where I did my residency and fellowship training. And, yeah, I guess, as a matter of fact, I probably still hold some appointment at Memorial Sloan-Kettering in New York City. I used to do their infectious disease when they had a difficult time and they needed somebody to handle it for them.
Q. Okay. You still --
A. There are a lot of other affiliations that you'd have to read because I'd never remember them.

Q. Okay. Well, I'm not going to go through all of them, just some of them.

I want to talk about your Board certifications. Are you Board certified in any area of medicine?

A. Internal medicine.

Q. And what is internal medicine just so we're clear on that? Anything nonsurgical?

A. Well, not children. But, yeah, anything else. So heart disease and cancer, lung disease and kidney disease and intestinal disease and infectious disease.

It's very broad. It's almost what you said. If it isn't in the realm of surgery or neurology, it's likely to fall under the Department of Internal Medicine.

Q. Now, are you a fellow in any subspecialty areas?

A. I am.

Q. And you need to tell us first how do you

become a fellow? I don't think you just mean a fine fellow; right? You mean there's something special about it?

A. Well, yeah, it varies with the expert group. I mean, some of them, it's by taking a test and then being admitted; others, it's just by having your credentials reviewed and accepted by the reviewing Board.

So, for example, I'm a fellow of the American College of Epidemiology and the American College of Preventive Medicine. Both of those, it was just the case -- Their Board started when I -- Their certification started when I was already Chair.

And they just looked over my credentials and said, at least in the case of the preventive medicine group, that I didn't have to take an exam. And the American College of Epidemiology, you still don't have to take an exam. It's all by credentials.

Q. You're also Board certified in infectious -- I'm sorry, you're a fellow in infectious diseases; aren't you?

A. Right.

Yeah, I did not -- I did not take the exam for two reasons: One, I was already a fellow -- a member before or a fellow, I guess, before they started giving the exams; and, second, it turned out that some of the people writing the exam were people I trained. And I figured I didn't need to take the exam under that circumstance.

Q. They probably didn't, either.

A. I don't know about that.

Q. Dr. Louria, I want to talk about your research publications and professional affiliations for a little bit.

And I'd like to call up and publish, if Your Honor pleases, DDA-2130.

THE COURT:
You may publish it.
EXAMINATION BY MR. WILLIAMS:
Q. Dr. Louria, you've been busy writing?
A. Pretty busy.
Q. You've written over 330 publications in medical journals?
A. It's over 330, right.
Q. I'm sorry. It says 323 on here, but you've written actually more than that; haven't you?
A. It's somewhere between 330 and 340. I don't know exactly where it is.
Q. And have most of those been in what we call peer-reviewed journals? That's another word that's been mentioned frequently in this trial.
A. Well, not all; but the overwhelming majority, sure.
Q. And peer-reviewed means there's an editorial board and an independent panel of experts that review the article and the publication to determine if it's suitable to go in the journal before it goes in; is that right?
A. Yeah. There's a lot of variations. Some of them are very rigid like The New England Journal of Medicine; and some state journals, for example, the review process is much less rigorous. But, yeah, they all qualify as peer-reviewed.

Q. Have you written for The New England Journal of Medicine?
A. I have.
Q. And are some of the subjects that you've written on preventive medicine?
A. Preventive medicine, infectious disease.
Q. Health promotion?
A. Drug abuse, health promotion.
Q. Medical screening?
A. Cancer, medical screening, yeah.
Q. You've written 79 books in chapters -- book chapters or monographs?
A. Yeah. It's a little more than that now.
Q. And what have those been on?
A. Well, the same general topics. Yeah, I think -- I don't think there's anything different about that group from the publications.
Q. Those broad areas that we talked about, medical screening, health promotion, health prevention, disease prevention, epidemiology, those sorts of things?
A. Yeah.
I'll tell you, I'd really have to read the individual ones. I suspect that the majority of them are either on infectious disease or drug abuse.
Q. Now, you've written five books?
A. I have.
Q. Three on drug abuse and two on health promotion and disease prevention?
A. That's right.
Q. Now, health promotion and disease prevention, is that what screening would fit into, medical

screening?
A. That's part of it. That's only part of it. I mean, there's a lot more to it than that.
Q. Okay. And we're going to talk about that.
I want to move on to your medical journal affiliations.
You can take that down now, Matt.
Doctor, other than writing books and articles, you have also been on editorial boards; haven't you --
A. Some.
Q. -- over the years?
A. Some.
Q. You were on the Editorial Board of the Antimicrobial Agents and Chemotherapy?
A. Yeah, that's a long time ago.
Q. You were on the Editorial Board of the American Journal of Medicine?
A. Also, a long time ago.
Q. You were an associate editor of the yearbook for Medical Publishers?
A. Yeah, I guess.
Q. And you also were the editor of the International Journal of Infectious Diseases?
A. Yeah, that's quite recent.
Q. Now, when you're on these editorial boards, that means you're the reviewer? You're one of the what we've been calling -- You're a peer reviewer at that time and you review articles in publications to determine if they're suitable to go in the particular journal; is that right?
A. Yes.

And depending on the journal, you spend some time at meetings to decide the way the journal is going to go, its policy, et cetera.
Q. I want to take a look at the medical societies that you've belonged to.
I'd like to call up DDA-2117, Matt, and ask permission to publish.
THE COURT:
You may publish it.
EXAMINATION BY MR. WILLIAMS:
Q. Dr. Louria, I'm not going to go through all of these. I just would like for you to talk to us about a couple of them. Right up at the top, the American College of Physicians, you were a fellow in 1970 and a master in 1992. Tell us about that.
A. About what?
Q. About becoming a master in the American College of Physicians. That's a pretty rarified area; isn't it?
A. Yeah, it's unusual.
They have a committee that selects a relatively small number of doctors from around the country for elevation to mastership each year.
Q. And how many masters are in New Jersey or from New Jersey?
A. Living? Or living and dead?

Q. You can just give me living. I won't be talking to those that are dead.
A. As far as I know, there are six: Four living and two dead.
Q. And that's out of how many doctors in New Jersey?

A. Oh, I can't tell you what the denominator is. I mean, there are 15,000, about, licensed M.D.s in New Jersey. Again, that's sort of a guess but it's about that. But I can't really tell you because they've been doing this for about, I think, forty or fifty years. So, obviously, there would be a lot more doctors than 15,000. That's the current number of doctors.
Q. And there are only six of you guys; is that --
A. As far as I know. I mean, you know, I might have -- Maybe in the -- Yeah, I think I do know it. I think there's six. But, you know, it's possible I didn't pay attention and that there are seven or eight, but no more than that.
Q. You're also in the American College of Preventive Medicine?
A. I am.
Q. And, also, in the Society for Epidemiology Research?
A. That's right.
Q. Okay. I'm going to move on, Doctor. I want to talk about some of the honors you've received.
I'd like to call up DDA-2118. And ask permission to publish.
THE COURT:
You may publish it.
EXAMINATION BY MR. WILLIAMS:
Q. Once again, Dr. Louria, I'm not going to ask you about all of these but a couple of them I'd like to ask you about.
First of all, four notches down, the Richard

and Hinda Rosenthal Foundation Award, can you tell us about that one?
A. Okay. By the way, it's really minor but there's one error. The Brown Award is from the New Jersey Public Health Association, not Public Health Services.
Now, which one? The Rosenthal Award?
Q. Yes.
A. That's an award that's given out annually by the American College of Physicians. And they give two Rosenthal Awards. One, I think, is community service. The one I got was for innovations in care of the communities. In my case related to public health, health promotion.
Q. And disease prevention?
A. Yeah.
Q. And you're going to tell us about that later.
That's related to your 17 points in the screening program that you developed for the State

of New Jersey; is that right?
A. Well, I think that was part of it. But it's actually given for your overall activities. I spent a lot of time in drug abuse and drug abuse policy. I'm sure that played a role.
But in point of fact, you never find out what deliberations they made to give you the award. You don't even find out who the award committee is. You just know that they do or don't give it to you.
Q. What about the Clara Barton Medical Science Award that was given by the New Jersey Governor in 1991?
A. Yeah. Yeah, I sort of like that one. That's

the -- That's called the Governor's medal. And I'm not sure it's given annually but it could be as much as annually. And they pick somebody they think has made a real contribution in health to the State of New Jersey.
Q. Why did they pick you in 1991?
A. I have no idea, but I'm glad they did.
Q. I'll accept that.
Could it possibly be the program that you developed, your 17-point Health-Full-Life Program?
A. Well, it could be. That was not law then, so I don't know how much of a role that played. I kind of think it was more just what my department was doing at the time to try and get people in New Jersey to be healthy.
Q. And you mentioned the Brown Award that's from the New Jersey Public Health --
A. Association.
Q. -- Association. What was that one for?
A. Again, that's given for contributions in public health. And, again, I think that was given primarily because we were an activist department and we were doing things like screening the entire population of Newark, the kids, for lead poisoning and we were establishing community centers in Newark. That was pretty early in my career there. And I think it was that kind of activity.
And the other thing is we were asked by the feds, by the federal government, to monitor -- and I mean monitor, not screen -- to monitor every drug abuse rehabilitation program in Newark. So we were very active in that. I think, those would be the

three areas that would have been central to that award.
Q. Doctor, let's focus a little bit more on the issues here, medical screening. Have you done, ever done teaching of specifically medical screening or medical monitoring, what we're calling here?
A. Oh, sure. I mean, not only at our place but as part of what I did with our program. I went around the country speaking at grand rounds, at public meetings. I'd speak anyplace I could on what our program is and was and why we thought it was so important for everybody to follow.

Q. But you've taught medical screening and preventive medicine to interns and medical students?
A. Well, yeah. Yeah, I mean, to medical students every year. I mean, that was part -- You know, obviously, I had some control over the curriculum that was taught in preventive medicine to every student. Obligatory, you know, not voluntary. And screening and our program was always a part of that. The interns, that would be only to those who came to the grand rounds I gave. I wasn't particularly focused on talking to interns about it.
Q. You've taught medical screening to nurses and public health specialists?
A. Oh, I've taught it to anybody who would listen.
Q. I want to talk about your publications, specifically those that dealt with screening. You've authored some publications over the years just dealing specifically with screening; haven't you?

A. I have. I mean, not -- There are not a large number for a very interesting reason; namely, that our program for health promotion and disease prevention, there's got to be evidence to get into the program.
And so if you present the program to a journal and you say, "Okay, here's our program," their reaction is "Oh, yeah, but all the stuff is pretty standard. Why would we publish it? It's not new." So there are a limited number of publications. But, of course, there are two books on it.
Q. Before I even get to those, I'm talking about just screening generally. For instance, in 1976, you and some others published an article entitled "Primary and Secondary Prevention Among Adults: An Analysis With Comments on Screening and Health Education"; right?
A. Yes.
But everything I published on health promotion, disease prevention is geared to the -- our program, which is now state law in New Jersey. So all that was was -- That publication basically is the start of it and it's the background for what we could glean from the literature at that time.
And that's true of every other publication there and it's true of the two books. I mean, the two books are -- that's what the two books are about.
Q. Well, let's get to those two books.
A. Okay.
MR. WILLIAMS:

I'd like to call up DDA-2106.
Your Honor, I request permission to publish, please.
THE COURT:
You may publish it.

EXAMINATION BY MR. WILLIAMS:
Q. Dr. Louria, you studied for and authored Stay Well, the book entitled Stay Well in 1982?
A. I did.
Q. And, also, Your Healthy Body, Your Healthy Life, which I think is in the Second Edition? I'm holding them in my hand. Stay Well in my right hand and Your Healthy Body, Your Healthy Life, Second Edition in 1991?
A. That's right.
Q. And these books are on health promotion and disease prevention?
A. That's -- Yeah, that's all they're about.
Q. And it's based on research that you've, I guess, done back from the 1960s on things that people can do to lead a more healthy life?
A. Yeah, I'd have to think if we ever did any active research on most of those. But what that represents is a review of the literature that's available in each of the areas and then my own judgment as to how that could be translated into a specific program.

So a fair amount of what's in there is a value judgment based on what I -- what I reviewed. It doesn't necessarily mean that everybody in the medical profession agrees with what's in there.
Q. Well, let's talk about what's in here.

You started doing your research and collecting data for these books back in the 1960s?
A. No, in -- I went to the New Jersey Medical School in 1970 and I was in infectious disease. I was asked by the dean, who I knew quite well, he had come from Sloan-Kettering, he asked if I would come over there and run a Department of Preventive Medicine because of my background primarily in drug abuse. And that I'd become involved in policy and I had a gubernatorial appointment at the time in New York.

And he said if I'd do it, he'd put infectious diseases in my department, which was very unusual. And so I did it. And took some courses in epidemiology. And then I realized that there was no program for the public that was simple and reasonably documented and inexpensive and aesthetic. By "aesthetic," I mean that the public would be willing to follow.

And so I spent basically the next ten years -- I mean, not exclusively, I was doing a lot of other things -- but I looked up, along with my colleagues who were on that first paper, everything we could find.

And then we began developing, particularly, I began developing a program that was limited in 1980. I think in 1980 there were something like 10 or 11 points. And by 1985, there were 17 tests and actions.

And our goal was to provide a program that everybody could follow and included everything that should be included but, at the same time, was

spartan. We didn't want to put in anything extra. And would maximize their chances of leading longer, healthier lives.

And so we finalized the program -- I guess I finalized the program in 1985. And our goal was to be so conservative that we'd never have to say to the public, yeah, we told you to do this but you don't have to do it because now newer data show that we urged you to do something for which it turns out the evidence isn't very good.

And as a result of that, we've -- we have not had to modify the program until 2002. In 2002, by then it's state law. In 2002, we modified the program a little. Those modifications are now in the legislature to change the law.

And, you know, they're not big modifications. But new evidence becomes available. And I think we're now facing the first possibility that we're going to have to tell people that something we told them to do doesn't really have to be done. We're not ready yet.

Q. Can I get to -- I want to show -- I want everyone to see what you told everyone to do. The 17 points that were developed and the purpose of those 17 points is that these are things that, if people do them, based on your research and your data, it will give them a likelihood to live a more healthy life; is that right?

A. Oh, absolutely.

Q. Let's look at --

A. Absolutely.

MR. WILLIAMS:

Let's look at them. I'd like to call up Exhibit GMM -- I'm sorry, wrong exhibit -- Exhibit GMM-0487.

Request permission to publish, Your Honor.

THE COURT:

Mr. Bruno, any objection?

MR. BRUNO:

No, Judge. As I told you before --

THE COURT:

This is an exhibit. It's not a demonstrative.

MR. BRUNO:

I don't have any objection to anything.

MR. WILLIAMS:

That's nice to hear.

MR. SINGLETON:

Ever?

MR. BRUNO:

No, the documents. I mean, I might have a -- I want to make it go fast.

THE COURT:

You may publish it.

MR. WILLIAMS:

I'd like to go to Page 6, please, Matt.

EXAMINATION BY MR. WILLIAMS:

Q. And, Dr. Louria, this is right in the book I'm holding in my hand; is that right? And this was published in 1991?
A. Yes.
MR. WILLIAMS:
May I publish Page 6, Your Honor?

THE COURT:
Yes.
MR. WILLIAMS:
Is there any way that can be expanded, Matt?
MR. RUSS HERMAN:
I think if you put it on that ELMO, you can probably enlarge it. That device up there (indicating).
MR. WILLIAMS:
Maybe we can go, I guess, portion by portion. Could we do that?
For instance, if we went to Test or Action 1 through 3 across and blew that up? And can we blow up the whole thing which says the age at which you start, which is on the right-hand side? I'm not sure everyone can see that.
EXAMINATION BY MR. WILLIAMS:
Q. Dr. Louria, is it clear on your monitor?
A. Yes, it really is. It's helpful.
Q. And these are the points that you developed from your research over the years? And if folks do these things, you think they'll live a healthier life; is that right?
A. Well, I tell you, I'd rather not put it the way you just did. I didn't develop any of these points. What I did was I looked at what the data were. But nothing in here is supposed to be original and new with me. The idea is to have the evidence that allows you to put it in a program.
Now, in some places, I made a value judgment

as to whether -- which side of the evidence I was going to fall on and whether I was going to do it. And that's the basis for some disagreements with other groups. But I can support everything in here with at least reasonable evidence. So it's wrong to say I developed it. I didn't develop blood pressure screening.
Q. I understand.
A. But I used what was available, sure.
Q. Let's look at what you said.
Points Number 1 through 3, blood pressure determination, yearly after age 20.
A. Yeah. Now, remember, this book is '91.
I take it you don't have an exhibit with the current recommendations?
Q. Yes. We just haven't gotten up to that point yet.
A. Okay. Yes. To save time, since you're going to show the other, I will tell you we've changed the

timelines a bit. But I won't comment on those.
But, yes. Blood pressure; blood cholesterol; the third one is so-called good cholesterol that actually protects you, so the higher the better. Those are the only three I can see on my screen so far.
Q. Can we go, Matt, to 4 through 6?
A. Pap smear; breast self-examination, that's the one that is becoming iffy. But we still -- I still support it, a mammogram. Part of these -- Some of these are tests that are done to you, in essence, to draw blood or to do a mammogram; and some of them are self-administered.

Number 7, like Number 5, breast self-examination, testicular self-examination is self-administered.
Number 8, I can just see the top, stool examination, that's for detection of polyps that are in the intestine that could become cancerous or early cancer.
The hemoglobin we no longer recommend. That's not a screening test. And we never did put it in as a screening test. That's because people who were anemic, low hemoglobin, feel lousy. So somebody pointed out to us that this program is for healthy adults. And they said, well, you know, if they're anemic and they feel lousy, they are no longer healthy adults; they're symptomatic. And we agreed with that. So we dropped it.
And Number 10 is screening for bowel cancer.
Number 11 is --
Q. It says left-sided. Why is it just left-sided?
A. Yeah, we've changed that somewhat.
Left-sided because if you have a recommendation, it's easy to make recommendations if you don't have to do policy. We wanted policy. And --
Q. I mean physically, Dr. Louria, why --
A. No, I'm explaining it. I'm explaining it. I'm not going off on a tangent.
For policy, if we did more, if we did the whole intestine, the risk of perforation of the bowel or hemorrhage is increased. It's a better test, but there's more risk.

And we looked up to see whether there were enough trained gastroenterologists to do the full test in this country, if we recommended it. And the answer is there weren't. So we recommended a test that is not quite as good but it's still pretty good. And, besides, the evidence only focused on this at the time we did it, only focused on this.
Q. And you keep mentioning the evidence. That was important, what the evidence was as to whether you would propose a particular test or procedure; is that right?
A. Oh, sure.

For bowel cancer, the evidence you had to have was that the procedure reduced deaths from bowel cancer. And there was then and there's a lot more now. No, I take that back. By '91, we pretty much had solid evidence. There's a little more now. You're going to get to the full colonoscopy, so I'll hold the explanation for that until then.

A glaucoma eye test is for eye -- In essence, it is hypertension of the eye. And it's a disease that can lead to blindness. This is one I made a judgment on. I couldn't -- The evidence was not clear. And up front we would say we included this because we came down on the side of saying that you could prevent it but we're not sure we're right about this and we'll wait to see the evidence.

And I think it's a year ago, two years ago, a multicenter study showed you could prevent 50 percent of glaucoma by intervention early.

Q. You keep saying "the evidence." The evidence of what? What is the evidence that we're looking

for before we propose a screening test?

A. It depends on the screening test. With glaucoma, the evidence you're looking for is that you can prevent blindness. That's what you're looking for.

Q. And with the cancer tests, the evidence you said you're looking for is that you could reduce deaths from that form of cancer; is that right?

A. Oh, absolutely. With cancer, with invasive cancer that has the capability of causing a lot of death, if you can't show a death benefit, you don't have a screening test.

Q. And by "death benefit," you mean the screening reduces death rates?

A. Deaths. Deaths, nothing else. If it can't do that, it isn't a proper test.

Q. Let's keep going down, Matt. We're about to finish the list.

A. Weight determination.

Q. How often should I weigh myself, Doctor? Only once a month, huh?

A. Well, no, no.

Q. That will work.

A. If you read the book, I just -- I hope I said that we'd just as soon you weigh yourself every day. If you're trying to lose weight, you have to weigh yourself every day. We said at least monthly as an absolute minimum. But weekly, every day, that's fine with us.

We want people to pay attention to their weight. It's one of the three big epidemics in this country and it's leading us to absolute disaster.

This trial is about smoking, but there are some people now who think that overweight is a bigger problem in the United States than smoking.

Q. Let's look at your last --

A. And I'm one of them.

Q. -- from 13 to 17.
A. Immunization update, yeah, nobody would quarrel with that. And we use the CDC and the American College of Physicians and the American Pediatric Society -- that's the wrong name -- but we use their recommendations for immunization.
Daily low back exercises, there's never been a proper study of that. We felt, in point of fact, that 80 percent of people can have low back pain. That's significant during their time. And my own experience and that of others is -- and some studies, good enough for us -- we included it.
Q. And the last two, nutrition and diet and seat belt use?
A. Well, you forgot smoking control.
Q. Oh, I'm sorry. Tell me about smoking control.
A. I've always said -- and I know we're going to get to this -- that it's better not to smoke at all; but if you, if you must smoke, I think you ought to smoke less than ten a day of low tar, filtered cigarettes.
And I know the arguments on it. I have no intention of changing that. But my Board, my National Advisory Board to my website has begged me over the years to sort of drop that. They keep saying, "You might encourage people by doing that."

And I've always said tens of millions of people in this country smoke. At least if they've got to smoke, I'll tell them how to do it safer.
But, of course, they should stop smoking. Of course, they should. So now we emphasize a lot more about not smoking at all. But we're very encouraged by a study that just came out of California that's amazing that says that in -- I think it was two years ago, maybe three -- when they did the study, that 60 percent of people who smoke in California now smoke less than 15 cigarettes a day.
And I don't know whether we had any role in that, but I'd love to take some credit for that because the figure used to be 20 percent.
Q. Let's go over your last two points. Nutrition and diet and seat belt use, those two things, those are things you think everybody should do and they'll be safer; is that right?
A. Everybody should pay attention to both, correct.
Q. Now, these were your 17 points that you published in books. And you published those in books so people could read them and so they could lead a healthier life.
But you went a step farther than that and, through your efforts, 17 points similar to these became actual law in New Jersey whereby health insurers have to pay for those insureds to have an exam that covers the items that are in the law right now; is that right?
A. Our program is law, item for item. And, theoretically, they have to follow it. But we're

still having a lot of trouble getting it fully implemented.

Q. Well, let's look at the law right now that was taken directly from your program item for item.

I'd like to call up DDA-2107.

And request permission to publish, Your Honor.

THE COURT:

You may publish it.

EXAMINATION BY MR. WILLIAMS:

Q. Now, Professor Louria, Dr. Louria, these look very much like the items we saw before. But these items are in the current law of New Jersey; is that right?

A. Except the last one where it says osteoporosis screening, that's now part of our program but it has not yet completed its progress through the legislature. I think by fall, the revised bill will pass.

Q. And here we have things divided up. We had the long list before. You've got "SELF-ADMINISTERED RECOMMENDATIONS" on one side. And those are the things that you do for yourself, basically?

A. Yeah. You can't mandate them in the law. All you can do is what we've done: Mandate a consultation period and say these items ought to be brought up in the consultation period.

Q. And then on the left-hand side, you have "SCREENING TESTS AND PROCEDURES" --

A. Right.

Q. -- that are based on the evidence you recommended and based on the evidence the State of

New Jersey has adopted as things that everybody should have done in specific time periods; is that right?

A. That is correct.

Q. Let me ask you this. We see what your program was and how it was adopted by the State of New Jersey into law. If a new effective screening test were to come along, would you change your program?

A. If a new, documented screening test became available, would we change it? In our program or the law or both?

Q. Well, I'm going to talk about both. But just tell me about your program first.

If a new effective screening program came along -- and you said "documented," and I'm going to ask you what that is first, sir -- but my question is would you add it to your program if a new effective screening program came along?

A. Overnight.

Q. And when you said "documented," what did you mean by that?

A. If you've got the evidence, if you have the evidence, we will add it; if you don't have the evidence, we will not.

Notice we don't screen for prostate cancer.

We will not until there's evidence.
Q. Now, the law, you mentioned the law. How would the law change? Would you be involved in that?
A. Oh, sure. I'd share the three-person Advisory Board to the Health Wellness Promotion Act,

which is our law. And, by law, we all have to have epidemiology expertise. And our obligation, among others, but the big one is to constantly review the evidence and change the law in accord with the evidence. We can change timelines by ourselves. For anything major, add something, drop something, we have to go back to the legislature for permission.
Q. When you say if you had the evidence, what evidence are you looking for, Doctor, when it comes to deadly diseases like cancer? Like a lung cancer or a bladder cancer, what evidence are you looking for?
A. You have to prove in randomized controlled studies that it reduces deaths or we will not include it.
Q. Now, Doctor, you did years of research before you decided on which tests were medically necessary to add to your program and propose to the legislature; is that right?
A. That's right.
Q. And you did all that research before you got involved in this case or anything like that; is that right?
A. Oh, sure. But we're still doing the research. I mean, just look at my website. We update everything -- We have articles on anything that we think relates to health promotion and disease prevention that is of importance to the public.
Q. Well, let me ask you this. We see the screening procedures up there and we see the

self-administered procedures. Did you think about adopting any tests specifically for smokers and former smokers?
A. Sure, we thought of it. Of course, we thought of it.
Q. Did you study it?
A. Of course, we studied it.
Q. But you didn't do it?
A. Why would we do it? There are no screening tests for smokers that make a difference. With smokers, the only thing you can do is say "Stop smoking."
Q. Well, for instance, lung cancer, you don't have a screening test up there for lung cancer that you propose. Why is that?
A. Just what I said. There is no documented evidence that any screening test for lung cancer reduces deaths. And all you can do is, as I said, tell people to stop smoking and tell them,

unfortunately, it will take twenty years before they're back to nonsmoking risk. And some people now think you never quite get there.
Q. Did you propose any tests for smokers to detect smoking-related COPD in your program and did you propose that to the legislature?
A. You mean did we propose spirometry to diagnose COPD?
Q. Yes.
A. Is that what you mean?
Q. Yes.
A. No. I can't think of why you'd do that.
Q. What about for heart disease? Did you

propose any specific tests for smokers to detect heart disease? I'm sure they have a lot of smokers in New Jersey.
A. We have a lot of smokers in New Jersey.
Q. Even in your own program that you have control over, why nothing specific for smokers?
A. Because I don't know any test -- I'm going to be evasive on that until you tell me what test you're talking about.
Q. For smoking-related diseases, for instance, like lung cancer?
A. No, no, I understand.
Oh, well, we've already talked about lung cancer.
Q. Well, heart disease.
A. Yeah.
No, I mean, with heart disease you tell people not to smoke.
Q. Bladder cancer?
A. No, there are no studies showing that you can change the course of bladder cancer. There are no randomized controlled studies on bladder cancer. And we'll get into it, but there are plenty of reasons not -- not to recommend it for bladder cancer.
Q. Now, if studies came out that showed that there were effective screening tests for lung cancer, for COPD, for heart disease and for bladder cancer, you would add those to your program and you would seek to have those added to the New Jersey Wellness Act; wouldn't you?
A. Overnight for the former, we'd bring it up in

our Advisory Board for the latter. But we have multiple considerations aside from the recommendation.
Our program is easy. It's recommendations. Like the U. S. Preventive Services Task Force. The law is much more difficult because we have constraints in the law that we build in to protect the integrity of the law in the future.
Q. And if there was an effective screening test, it would be for everybody in your program and in the law? It wouldn't just be for smokers; isn't that right?

A. Oh, no. If we had a -- If we had a test that would work for smokers only and didn't apply to other people, we'd put it in the program and say it's for smokers. But if it applied to the general population, then we'd put it out in the general population. We have no hesitation about adding something if we could benefit only smokers. But I don't know of any such test that's been proposed.
Q. And you know of evidence of no such test that would be effective?
A. Oh, there is no evidence, period. There is no evidence.
Q. Doctor, I want to talk about your training and experience in cancer epidemiology.
And, Your Honor, before I switch to that subject, it may be a good time to take your break.
THE COURT:
Yes, we'll take our mid afternoon recess at this point until 3:00 o'clock by the wall clock.

(Whereupon the jury is excused at this time.)
THE COURT:
Let the record reflect the jury has left the courtroom.
Anything for the record by plaintiffs' counsel?
MR. BRUNO:
No, Your Honor.
MR. WILLIAMS:
No, Your Honor.
THE COURT:
We will recess until 3:00 o'clock by the wall clock.
You may step down now.
THE WITNESS:
Thank you.
(Whereupon a brief recess was taken at this time from 2:43 o'clock p.m. to 3:01 o'clock p.m.)
(Whereupon the jury joins the proceedings at this time.)
THE SPECIAL MASTER:
Recess is over.
THE COURT:
Please be seated.
THE COURT:
Mr. Williams?
MR. WILLIAMS:
Yes. Thank you, Your Honor.

EXAMINATION BY MR. WILLIAMS:

Q. Dr. Louria, I have just a couple more

subjects I want to cover and then I'll be done with your qualifications.
And when we broke for recess, I was asking you about your experience in cancer epidemiology. And I just want to cover a couple of positions that

you held in cancer-related organizations.
From 1979 to 1982, you were Chairman of the Medical Committee of the American Cancer Society?
A. In New Jersey.
Q. Yes.
A. Right.
Q. Yes.
And you were a trustee with the American Cancer Society?
A. For awhile.
Q. And you were with the New Jersey State Commission on Cancer Research starting in 1987. Are you presently still on there?
A. No.
Q. You've been awarded a number of awards, honors for your work in the field of cancer. In 1986 you were Physician of the Year, according to the American Cancer Society for the New Jersey Division; is that right?
A. Right.
Q. And you published in the area of cancer; haven't you?
A. A few studies.
Q. Let me change subjects with you and talk about tobacco research.
Does preventive medicine deal with the use of tobacco?

A. Of course.
Q. And have you performed tobacco-related research?
A. A little bit.
Q. I guess back in the late 1960s or 1970s, you did some research on a fungus called aflatoxin; is that right?
A. It's the product of a fungus, right.
Q. And that appears in tobacco?
A. We were -- We did a study in which we looked to see whether or not aflatoxin might be in tobacco because it's one of the most potent carcinogens known. And since tobacco -- You can see fungi in tobacco, any tobacco. And we thought that was a possibility, so we did a study on it.
Q. What did you find? Did your study results indicate that it was in tobacco?
A. Well, we didn't find classic aflatoxin. But we found something, I forget what we called it, T-something, that chemically was very close to aflatoxin. And we thought it could have been a cause for tobacco-producing cancer.
Q. Did you publish your research on that?
A. I think that was published in 1974. I think that's when it was.
Q. Okay. So we're talking a little -- thirty years ago almost?
A. Oh, yeah. That was a long time ago.
Q. You also did research on the selenium content of tobacco and its relationship to lung cancer; is that right?
A. Yeah, we were interested in that because when

we gave aflatoxin to mice under the skin, we produced tumors. And we then gave the mice selenium. And we were able not to prevent the tumor but to delay its appearance.

So we thought that there would be a possibility that cigarettes in different countries where there were lower rates of lung cancer but people smoked a lot might be related to the selenium content of the tobacco. Because selenium is very different in different soils.

And, you know, it's a limited study but it was published in a very good place. And it supported that: That in countries where there were higher rates of lung cancer, there was less selenium in their tobacco; and, conversely, in countries where there was lower rate -- lower rates, there was more selenium in tobacco.

And we thought, since it was published in the Journal of the National Cancer Institute, that that would get people to say maybe we could have a safer cigarette by adding selenium to it.

And maybe six months ago, I read an interview with somebody related to the tobacco companies who said they were now investigating it. So it took them over twenty years to read the article, but at least people are thinking about it.

Q. Selenium is one of those things that -- I think you see it on your vitamin bottles -- it's one of those things that could be good for you but in too high concentrations, it's dangerous; isn't it?

A. A., it has not been shown that selenium in any vitamin or supplement helps anyone, for one;

and, two, just as you said, the margin between any potential benefit and harm is not very great.

We do not recommend selenium. But we do recommend that tobacco companies -- we've been doing it for twenty years -- that they pay attention to the possibility, if they're really serious about a safer cigarette, that at least they explore the possibility that if you put selenium in the cigarette, you could reduce its ability to cause cancer, yeah.

Q. Back in the 1960s, you applied to the CTR, the Council for Tobacco Research, for funding, I think, for your aflatoxin research; didn't you?

A. Yeah. Somebody pointed out to me in a deposition that I had -- I'd forgotten -- that was actually before I went into preventive medicine, but lawyers have dug out that, A., I did; and, B., I did several times. Because I'm told I asked for a three-year grant. And when I didn't get it, I got a one-year -- Somebody said it was 28,000.

I have no recollection of this. But that, apparently, I did receive 28,000 in the late sixties, I think. But no, no funding after that, though. I'm told that I applied for it in the second and then again in the third year. And, actually, I'm surprised that I didn't apply for it

for the selenium studies. But, apparently, apparently, I didn't.
Q. You said in depositions the plaintiffs' lawyers brought that to your attention but you don't even recall it? It was a long time ago, as you said, back in the 1960s?

A. Well, no, it was plaintiff lawyers and your colleagues who gave me -- I was told by one of your colleagues that the amount was 28,000. But, no, I had no -- I had no memory of that.
Q. Dr. Louria, this jury and all of us have been shown a lot of documents written by people at tobacco companies. Did you review any tobacco company documents for your testimony or to prepare for your testimony?
A. Did I review any tobacco company -- tobacco documents?
Q. Yes.
A. I think there were tobacco documents included in what I was sent of Dr. Burns' testimony. I think this is true. And I just put them on a shelf. I just looked at the title and I didn't -- I mean, that's not why I'm here. And so I wouldn't -- I wouldn't be interested in any tobacco company documents.
Q. And why is that?
A. Why would I? I'm here to talk about screening and a program that I think is bad and dangerous and undocumented. And that's all I'm here for. I'm not here to discuss the tobacco company documents.
Q. You've only testified in one other tobacco trial; is that right?
A. That's right.
Q. And that was the trial in which the plaintiffs were seeking medical screening tests, sort of like what they are here; is that right?
A. The same thing.

I'm sorry. I don't mean exactly the same thing. I mean the same general principle. I was there because they proposed a screening -- a set of screening tests which were somewhat different than what is being proposed here but not much different. And I don't even remember what the differences were. But, yeah, I testified against, against that.
Q. Now, in that case, did The Court accept you as an expert in the field of medical screening?
A. Oh, sure.
Q. A couple more questions, Dr. Louria.
You've devoted your entire life almost, your medical career -- we saw you came out of medical school fifty years ago -- you've devoted a lot of that to public health, preventive medicine, health promotion. And my question to you is why are you here testifying on behalf of the tobacco companies?
A. Just what I said. I couldn't care less about the tobacco companies. I'm here solely because I

think, as I just said, the screening program that's being proposed is a terrible program.

It is undocumented, it is potentially dangerous -- no, I'll take that back -- it is dangerous for the smokers in the class, and it is going to have adverse effects on the nonsmoking population of the State of Louisiana.

Q. Are you an expert in the standard of care with regard to screening tests applied by preventive medicine doctors?

A. Well, I don't mean to be evasive but I always have trouble with standards of care. If you're asking me do I think I'm an expert in screening, I

do.

Q. Okay.

A. And I think I know good screening from bad screening.

Q. Are you an expert in screening?

A. Yes.

Q. Are you an expert in the diseases that people -- that are screened for, some of the diseases that are screened for?

A. After all, I'm not a cardiologist and I'm not a urologist, but I consider myself authoritative in screening programs applied to them. And specifically for this trial, I think I'm knowledgeable about each of the proposed tests. And, obviously, I wouldn't come down here unless I thought I knew it well enough to say why I think they are bad news.

Q. And, specifically, when you refer to tests, you're talking about the low-dose CT scan for lung cancer, the spirometry test for COPD, the bladder cancer screening test, the hematuria test, the NMP-22 and the cytology test; is that right? And the stress electrocardio -- the stress test for the electro -- cardiovascular disease; is that right?

A. As screening tests.

Q. Yes.

A. You know, I don't hold myself to be authoritative in the mechanisms of NMP-22, for example. But NMP or anything else used for bladder screening, yes, I think I'm expert enough to give authoritative opinions.

MR. WILLIAMS:

Your Honor, at this time we'd like to

tender Dr. Louria as an expert in the fields of preventive medicine, internal medicine, health promotion, disease prevention, public health and infectious diseases with an emphasis on medical screening or medical monitoring tests and procedures, the evaluation of the screening and monitoring tests and related procedures plaintiffs propose in this case for lung cancer, COPD, heart disease and bladder cancer, and the current scientific and medical recommendations regarding screening for lung cancer,

COPD, heart disease and bladder cancer.
THE COURT:
Cross on qualifications, Mr. Bruno?
MR. BRUNO:
Yes, Your Honor.
MR. WILLIAMS:
Do you need this mike or do you have one?
MR. BRUNO:
I have a mike, Jack. I'd like the table, though, if you don't mind.
MR. WILLIAMS:
I'd be glad to move.
MR. BRUNO:
Good afternoon, everybody.
THE JURY:
Good afternoon.

VOIR DIRE EXAMINATION

BY MR. BRUNO:

Q. Doctor, my name is Joseph Bruno. I haven't talked to the jury in a little while.

Doctor, who do you work for in this case?

A. Who do I work for?

Q. Yes.

A. What do you mean, "work for"? I don't work -- I work for the New Jersey Medical School in the State of New Jersey.

Q. Who are you testifying for in this case?

A. I am testifying for the defendants.

Q. Which ones?

A. I don't know the answer to that. I mean, -- You mean am I testifying for just one? I thought I was testifying for the defense in general.

Q. I'm asking you, Doctor.

A. That's all my knowledge is. I was asked -- If you asked me which company asked me to come here, I cannot tell you. Who are my hosts when I'm down here? What is it? King & Spalding, I guess.

But I thought that there were multiple defendants and I was down here because I am somebody who has his own screening program and has strong beliefs about what's being proposed here. I didn't think I was testifying particularly for one company versus another.

Q. Well, do you know who the defendants are in this case? If you don't know, it's okay.

A. Well, yeah, I'm sort of -- No, I shouldn't be embarrassed by that. I know King & Spalding. But if you asked me which of the other companies, I'm sorry, I actually don't know.

Q. All right. And you testified for cigarette companies on at least one previous occasion; right?

A. I did.

Q. Do you know who you testified for in that case?

A. I do not.

Q. All right. So you're here, as you told this

jury, because -- Why exactly?
A. Because I have a screening program that I want to be -- that is in New Jersey and I want to be national policy. And I believe that bad screening crowds out good screening. And I am against bad screening. And I think this is bad screening. I'm here for no other reason.
Q. All right. So you think that if this jury determines that the class should be entitled to medical monitoring, that somehow or other that will make it more difficult for you to promote your 17-point plan to the legislature of this state; is that what you're telling the jury?
A. The consequences of that policy would do exactly that.
Q. Would you explain to the jury --
A. Sure.
Q. -- how that is?
A. Sure.
And I want to be very careful about it because I know what the rules are talking about costs. And I understand that. And I'll stay away from that.
The tests that are being proposed, three out of the four could not be limited to smokers, could not be limited to smokers. Now, what that means is that they would have to be offered to the nonsmoking

population of the State of Louisiana. And that means, in turn, that somebody -- I'm not talking about the class. Outside the class. Somebody has to pay for that. Premiums would go up, resources would be used.
I mean, if you were going to do -- if you were going to do our program properly, in a study I know you've read because you've read everything I've written, the comprehensive --
Q. Don't give me that much credit. Three hundred and sixty articles, I've read a few.
A. Mr. Bruno, I know you and I do give you that credit.
But you've read the one that says what we think and what we're trying to get in New Jersey as a comprehensive prevention examination, that takes a primary care doctor thirty minutes of time.
Now, if you use your resources on bad screening, you don't have the time to do good screening that we think is going to let people live longer, healthier lives.
So if you -- if you think I'm saying that this screening program by the class will have an adverse effect on the nonsmokers in Louisiana, you are absolutely correct. So I'm here for two reasons: One, I think it's bad for the class; B., I think it's bad for the people of Louisiana outside the class.
Q. All right. That was a long answer.
A. I'm sorry.
Q. I need to focus on the beginning of the answer, which was you told this jury that three of

the four tests, if this jury should determine are appropriate remedies for this class as a result of the bad conduct of the defendants, you would have to, your words, give it to nonsmokers?
A. Correct.
Q. Now, you're big on evidence-based medicine; right?
A. Yes.
Q. You're big on evidence for the premise which allows you to reach a conclusion; right?
A. I don't know about big. I try to focus on it.
Q. Okay. Explain to the jury why it would be that if in this court of law -- and you'll recognize we are governed by the law -- and if the law allows for this class to recover the screening, there is nothing in our law which would require that nonsmokers receive the same remedy; do you understand that?
A. It doesn't -- I mean, one thing I do have is experience with laws and legislatures.
Q. You do?
A. And I will tell you, Mr. Bruno, that -- And we're going to get into this, so I want to give you --
Q. We're into it now.
A. Well, I will if you want. But then we're going to start about the Japanese studies and the rates. And I don't want to do that, so -- All right.
Q. I don't want to object. But, Doc, I'm going to ask you, please, and I'm going to ask The Court

to instruct you.
MR. WITTMANN:
Your Honor, may we approach?
EXAMINATION BY MR. BRUNO:
Q. We have a rule, you answer the question asked --
MR. WITTMANN:
Your Honor, --
THE COURT:
Approach the bench.
(Whereupon a bench conference is held at this time as follows:)
THE COURT:
If you move The Court to ask me to instruct the witness not to volunteer information not called for by the question, then I will do that. And I think that's what he was doing. I'm going to do that now because he's very verbose. We'll be here for two weeks --
MR. WITTMANN:
I understand that.
THE COURT:
-- if you let him run off.
MR. WITTMANN:
But I was going to object to Mr. Bruno

interrupting the witness' answer.
THE COURT:
I understand that.
MR. WITTMANN:
He's interrupting the witness as he's trying to answer.

THE COURT:
But he's way off on a tangent saying that he's talking about the legislature and his experience. And I think it was appropriate. He can't object to the answer to his own question, I don't suppose. And that was a way to do it, but I'm going to handle it.
MR. WITTMANN:
Okay.
MR. BRUNO:
Thank you, Judge.
(Whereupon the bench conference is concluded at this time.)
THE COURT:
Doctor, when a question is asked of you, give a complete answer, please. But try to refrain from volunteering information that is not called for by the question.
Understood?
THE WITNESS:
Absolutely, Judge.
THE COURT:
Thank you.
Next question, Mr. Bruno.

EXAMINATION BY MR. BRUNO:

Q. Doctor, are you suggesting to this jury that you are an expert on the law in Louisiana?

A. No, I'm suggesting to this jury that if they adopt three of the four, it must be offered equally to nonsmokers in the State of Louisiana.

Q. Based on?

A. Based on the fact that there are as many, according to the evidence available to us, there are as many of the cancers that you would pick up in smokers by helical CAT scans in nonsmokers as there are smokers, number one, so you'd have to offer that.

Number two, 50 percent of bladder cancer is in nonsmokers. So if you say it's good for smokers, why wouldn't it be good for the 50 percent of nonsmokers?

Number three, with heart disease, the exercise stress test, even if you advocate it just for evaluation, not screening, the evidence -- the American College of Cardiology says offer it to anybody with two risk factors, one of which can be smoking; therefore, if you have high blood pressure and high cholesterol but you don't smoke, you fall into that category.

So three out of the four, you would have to

offer it to the nonsmokers of the people of Louisiana.
Q. Maybe I missed it. But what's the reason for that? Is it a law?
A. That has nothing to do with law. It's medical screening policy.
Q. Policy?
A. Yes.
Q. Whose policy?
A. It's what is ethically proper.
Q. Oh, it's ethics?
A. No, it's proper screening.
Q. Proper screening?

A. You cannot offer it only to smokers if the problem is exactly the same in nonsmokers; can you?
Q. So what you're telling the jury is that smoking-related cancer is caused by other things other than smoking?
A. No, no, I didn't say that.
Q. That's what we're here for, Doc.
A. What I said, Mr. Bruno, was that the evidence now available to us, startling evidence, is that if you do helical CAT scans in the State of Louisiana, the likelihood is that you will find the same rate of adenocarcinomas, that's all we're talking about, that's what you pick up, adenocarcinomas in smokers and nonsmokers. And, therefore, how can you offer it only to smokers?
Indeed, if I understand it, that does violate one of the rules that is part of this case: That the class is special in regard to this particular screening or risk factor.
Q. That's fine, Doctor.
Your testimony is that if you have a good screening test that would detect smoking-related cancer, that you've got to give that same test to everybody else? That's your testimony?
A. No, my testimony is about helical CAT scan. That's all I'm testifying about. With helical CAT scan, the evidence is the pickup rate for cancer is the same in nonsmokers.
And I don't see how in Louisiana or New Jersey or anyplace else we would say to a nonsmoker, yeah, you have the same rate of cancer as the smoker with this particular cancer by this particular test

but we're not offering you any benefit because you forgot to smoke.
Q. Right.
So your testimony then is that everybody has the same rate of getting cancer; right? That's what you just said.
A. What I'm saying is by helical CAT scan, not, not by cancer that we detect clinically. When we go to this new test that is part of the advocated program, yes, what I'm saying is that the evidence is that the pickup rate in three different studies, the only three studies that have been done on

smokers and nonsmokers, shows that the rate overall in those three studies is the same in smokers and nonsmokers. A thunderbolt, an absolute thunderbolt. But that's what the evidence is.

Q. That's all I want to do is find out where you are, what your testimony is, okay?

A. You bet.

MR. SHOLES:

Object to the editorializing.

THE COURT:

Overruled. Next question, please.

EXAMINATION BY MR. BRUNO:

Q. Doctor, the work that you did in selenium, I believe you testified to the jury that you felt like that could be a potential, a piece of information that the cigarette companies could use for their safe cigarette work; right?

A. Oh, I do, Mr. Bruno.

Q. All right. That's fine.

Now, you were graduated from the Harvard

University in 1949?

A. From Harvard College.

Q. College.

A. I did.

Q. And what was the subject of study?

A. Social relations.

Q. Social relations. What is that?

A. It's where three-sport varsity athletes go to get by.

Q. Doctor, I commend your absolute and total honesty.

So let me ask you this, Doctor. You were graduated from the Harvard Medical School some four years later?

A. I did.

Q. And that was in 1953?

A. It was.

Q. Would you agree with me that the state of medical knowledge has changed over the past fifty years?

A. Oh, dramatically. Over the past five years.

Q. Sure.

A. I mean, it just keeps changing, sure.

Q. Okay. Now, the field of public health -- I think you alluded a little bit to this during your questioning by Mr. Williams -- that's an extraordinarily broad field; is it not?

A. Absolutely, Mr. Bruno.

Q. You can, I suppose, focus on an infinite variety of medical issues; isn't that fair?

A. Absolutely. That is completely fair.

Q. All right. And in your career, you have,

gosh, you've covered the waterfront yourself; haven't you?

A. I have.

Q. In fact, you've talked about -- Well, you're a futurist? Would you consider yourself a futurist?

A. I'm a member of the World Future Society. Yes, I do consider myself a futurist.
Q. Well, tell the jury what that is.
A. Futurists are people -- and the World Future Society is dedicated to this -- who try and look years or decades or centuries ahead and figure out where we would like to be with any given issue, global warming, for example, and how we can best get there.

So futurists say the future cannot be predicted with any certainty. It's not immutable. I mean, it's not written irrevocably in the stars. And if we try, we can change that future for the benefit of mankind and Planet Earth.

Yeah, I spend -- you're right, Mr. Bruno -- I spend an increasing amount of my time on that and the issue of approaching problems with systems thinking.
Q. And to illustrate the extraordinary breadth of this field, you've even written about what, in your mind, is an issue: "Creating Very Old People: Are We Ready for the Consequences?" Right?
A. You've been to my website. You're right.
Q. Maybe somebody else, not just me.

So tell the jury what's your concern about old people?
A. You mean now that I'm one? That we're not

being treated fairly by the rest of society. No, I'm going to make this very brief because this is going to be the subject of an extraordinary conference we're putting on next April.

Here's the issue. You can do one of two things in regard to aging: One is we can try and maximize everybody's chances of leading a longer and healthier life but within the boundaries of aging that our physiology now permits. So we'd like to see people to be able to live healthy, on average, at birth to a hundred, a hundred and ten, even a hundred and fifteen years.

But the science is going someplace completely different. Where the science is going -- and it's extraordinary and it changes every month -- is the possibility of totally changing the boundaries of aging so that people could live, at birth, from a hundred and twenty to a hundred and eighty or longer years.

And so my view can be exemplified by, without any details, by just telling you that four of the six talks next spring will be on the science. Then a demographer will come in and talk about how many people will be on the planet as a result of this. And I'm going to talk about, as a futurist, about the societal consequences of having people living to a hundred and twenty to a hundred and eighty years. It's a gargantuan topic.
Q. Extraordinary.

You've also written on air pollution, in particular, the fine particulate air pollution and its effect on lung cancer?

A. Wait a minute. I didn't -- I didn't write on that. That's on my website. I reviewed an article on that.
Q. Okay. I apologize. That's my mistake.
But it's a subject of interest to you?
A. Oh, sure.
Q. And the whole point of this series of questions is to illustrate that the field of public health is so incredibly broad.
You've also had an interest in cancer incidence and mortality in your State of New Jersey? That's the --
A. Related to -- You mean related to toxic waste disposal sites?
Q. Exactly.
A. Yeah, we do.
I should say, Mr. Bruno -- I don't mean to be unresponsive -- but I should say that my critics will tell you that my view of public health is a bit broader than it should be, but --
Q. Well, but you're on the witness stand. So, if I may, allow me to ask you your views on this subject.
A. Of course.
Q. You've also had a view on the irrad --
A. Irradiated.
Q. -- irradiated food. And you have a problem with that; don't you?
A. I have very strong views on irradiated food. And I'm against. You bet.
Q. You've also been involved in lead poisoning of children?

A. Still am.
Q. Of course.
Let's see. We've got another one here on the environment, just air pollution in general. This may be an editor's viewpoint piece?
A. It is. It is. That's from my website. The one that says, "It's the Environment, Stupid"?
Q. Exactly.
A. Yeah, that's me with my gaudy headlines.
Q. And, Doctor, in your field, you're also interested in the effect of defective products on consumers in our society, too; right? How they can hurt us?
A. Well, I don't -- Well, not exactly, Mr. Bruno. I'm worried about -- I mean, do I get concerned with the evidence for alternative and complementary medicines or other --
Q. No, no, no. Just basically this: That manufacturers -- Well, let me ask you this. There are hundreds, if not thousands, of manufacturers of products in this country today; right?
And it is important from a public health perspective that these manufacturers manufacture safe products? They ought not contribute to our already overburdened healthy or unhealthy lifestyle?
A. As much as possible, of course, that's true.

Q. Sure.
And all I'm suggesting is the field is broad enough to encompass an interest or a concern in making certain that products are manufactured without defects so that they don't hurt people?
A. But that's not something that I really get

involved in.
Q. Okay. And, let's see, the last one I have here is you've even participated in a survey of what you call The Toxic Ten, which is the most -- the ten most dangerous companies in the -- I think this is the world, I don't recall if this is the world or the country -- identifying the companies responsible for a disproportionate share of environmental degradation in the United States was not possible, so you did it -- you did it for this country. And this was in part of a Mother Jones exercise. You were on the list of individuals making up the list?
A. I had nothing to do with that list.
Q. You didn't?
A. I've never seen the list and I wouldn't -- I wouldn't have the knowledge to do that.
But I'll tell you, Mr. Bruno --
Q. Can I show it to you real quick?
A. -- it's not the first time that people have done it.
Q. If you'll look on the third page, you'll see the list -- I'm sorry, the second page, you'll see the list of the judges and the industries.
A. This is 2003?
Q. Is that your name on the second page?
A. On the second page.
Q. The judges. The bottom.
A. Oh, this is something I'm no longer associated with. But this is a good group. It's Council for Economic Priorities. I was one of their judges.
But I had zero to do with making up this

list. I mean zero.
Q. Okay. Shame on them for listing you on this one.
A. Oh, no, no, no. Wait a minute. What year is that?
Q. It's -- Well, I don't know. Let me show it to you. It says 2003 on the economist thing, but who knows?
A. Yeah. I haven't been a judge for that organization for four years. What they would do is they would send us a bunch of industry activities relating to the environment.
And it's true the Council for Economic Priorities would make up a list of the ten best and the ten worst. And they had different categories for employees, for the environment, for pay.
And I was a faithful judge. I went to all their meetings and would tell them what I thought. But the decisions were completely made by other

people. And the reason I left was I thought they weren't -- they weren't paying attention to what we said.

In point of fact, you know, I'd say I thought a company was terrible for the environment, say, one of the lumber companies. And the next thing I'd find is that that company wasn't listed as terrible. And I began to think that there was some politics playing a role. I didn't want any part of it.

Q. Sure.

A. But did I do this with them? I did it for four years and I would say -- it's about four years -- and I stopped at least four years ago and I've

had no contact with them. So if I'm on for this recently, it's fake.

Q. Doctor, would you agree with me that a company that exposes individuals to toxins and poisons has a responsibility to do all that it can to keep that from happening?

MR. WITTMANN:
Objection, Your Honor. May we approach?
THE COURT:
Yes.
MR. BRUNO:
I'll withdraw the question to save us some time.

EXAMINATION BY MR. BRUNO:

Q. Doctor, let's get to your publications, 323, 330 some-odd publications. The truth of it is, Doctor, the largest number of those publications relate to your work in infectious diseases, drugs; right?

I mean, and I'm not a scientist, but from my review of it, a very, very significantly large portion of those articles dealt with those subjects?

A. I haven't checked it, but I'll bet you're correct.

Q. Well, I guess where I'm going here is real simple. And you pretty much alluded to this already. Of the three hundred and some-odd publications, only four of them deal with screening; isn't that true? And I have --

A. Well, plus two books.

Q. We'll get to the books in a moment. Let's just talk about the articles.

A. Only four deal with screening? I can't believe that.

Q. Well, --

A. I made a summary, if it's okay.

Q. Oh, please. Yeah, sure.

A. It's just a summary of different categories of my publications.

Q. All right. You tell me if I'm wrong.

A. No, you may be right. Only four?

Q. Well, this is what I've got.

Journal of Public Health Policy, 1989, "The Perceptions of One Department of Preventive Medicine

About Its Obligations to the Larger Community."
A. Yeah.
No, that has nothing to do with screening.
Q. Then we just went down to three.
"Health Promotion: The Health-Full-Life Program." NJ Med, is that New Jersey or is that National Journal?
A. New Jersey Medicine, the state journal.
Q. Okay. That's a state journal. That's about your screening; correct?
A. Uh-huh (indicating affirmatively).
Q. The Journal of Public Health Management Practices, 1995 --
A. Okay.
Q. -- "New Jersey Health Promotion and Disease Prevention Initiative," that's Number 2.
And Number 3 would be the New Jersey Medical Society?
A. New Jersey Medicine.
Q. Okay. "The Health Wellness Promotion Act and

Available CPT Codes." That's all I could find.
A. No, the 1977 in Preventive Medicine, that's about screening programs.
Q. That's four.
A. Well, see, I don't have it all in front of me. I'd bet I can find a lot more. Any publications on lead are about screening programs. We just are about to publish -- We just presented at national meetings lead screening programs and how you can prevent lead poisoning with calcium.
Q. All right. But let's take the lead -- let's put the lead in its own category. Because, indeed, those three categories, you work in lead --
A. Wait a minute. That's screening.
Q. I understand.
But you work in lead, you work in drugs and you work in infectious diseases. That's really what you're about? That's where you have developed and, indeed, earned your reputation in the medical community; isn't that true?
A. No, I don't think it is true. I think my -- most of my time right now is spent on the Health-Full-Life Program.
Q. I understand that.
A. I think a lot of my reputation is because of the law and the Advisory Board. When I go back, there are two people coming up from Maryland because they think they can get the Congress to adopt it.
Q. Well, we're going to talk about that, believe me, in a moment. But let's just touch on your books.
A. Yeah, let's.

Q. Do you agree that there are very few of your publications that deal with screening, I mean, as a proportion of the 330?
A. Oh, of course. Of course, I agree on that.
Q. Okay.

A. But I've already said why.
Q. Say it again. Go ahead.
A. I'll make it brief. I don't want to cut into your time.
Q. You can. It's okay.
A. No, I don't.
Our screening program, to get in there, it has to be at least reasonably documented. There's nothing novel about it. When you send it to a good medical journal, why in the world are they going to publish it just because somebody in New Jersey has a screening program that says, "This will allow people to live longer, healthier lives. And, by the way, it's all reasonably documented."
They say, "Come on. It's all reasonably documented. We know that. We've published about hypertension and cholesterol before. Why are we going to publish this?"
Q. Well, Doc, in truth and in fact, not a whole lot of people have embraced the 17 points; have they?
A. Oh, I'm not so sure about that. It was introduced into the Massachusetts legislature, into the California legislature. But I'm not going to argue with that. Have people embraced it the way we would like?
Q. No?

A. Absolutely not. You're right about that.
Q. And I appreciate that.
A. But we're not doing badly.
Q. Well, that's okay.
A. And we're doing better each month.
Q. Well, but you do understand that this case is not about your 17-point program?
A. But we're discussing my 17-point program.
Q. Only because you did it on direct. See, when they do direct, I do cross.
A. No, no. Of course, I understand.
Q. That's what I do.
A. Of course, I understand.
Q. But to be fair with you and the jury, this case isn't about your 17-point plan; right?
A. You're absolutely correct.
Q. Now, about your books, let's just touch on them just to make the point. The books didn't sell very well; did they?
A. No.
Q. In fact, --
A. Because you looked it up on Amazon.
Q. Well, let me put it on the record, please.
I did go to Amazon. And you know Amazon ranks books in terms of popularity. And did you know that your rank for the book Your Healthy Body, Your Healthy Life is 1,967,047?
A. Of course, I thought it was as popular as Harry Potter, but -- Well, your point's a good one. That's one reason -- That's one reason we got it into law, for exactly what you said: That I thought that if we just published good books, that people

would read them and say, "That makes sense. Let's do it." It did not happen.

And almost in desperation, I did something I didn't want to do: Went to the legislature and said, "If we can't persuade people elsewhere, let's make it law and see what happens." And it's the first time in the country it's been done.

I'm sorry.

Q. Well, I'm running out of time.

A. I'm sorry.

Q. Let's talk about this case.

A. Yes.

Q. You have done no original research with regard to the efficacy of any screening or monitoring programs for either lung cancer, COPD, heart disease or bladder cancer; right?

A. Absolutely, I have not done personal studies on those, absolutely.

Q. What you have done, in fact, is you have reviewed the literature?

A. That's exactly what we did on our 17-point program, you're correct.

Q. That's fine.

So what I need to understand is what, if anything, different do you bring to this courtroom, if all you did was review the literature than a physician from Ochsner who did the same thing, a physician from Tulane who did the same thing or a physician from LSU who did the exact same thing?

A. Well, for one thing, as far as I know, I'm the only one who's been to this courtroom who is an expert in screening; second, not having done a

specific study actually is advantageous.

When I used to go across the country with Tim Leary debating LSD, people would get up from the audience and say, "How can you do that? You've never taken LSD." And I said, "You bet. I'm in public health and, in point of fact, I'm the best guy to make a judgment about its dangers, not people who have taken it."

I think that I'm in a real position -- it's what I spend my life on, for goodness' sakes -- to give a dispassionate view of whether this stuff is good or whether it is bad. I think I bring a lot to this courtroom. And I don't think anybody else that has been in this courtroom has my expertise or focus.

Q. And your expertise is based upon nothing more than your review of the extant literature; isn't that true?

A. Good Lord, that's a lot.

Q. Okay. That's fine.

A. Why are you demeaning that?

Q. Well, I'm not. I'm not. Are you demeaning the LSU doctors?

A. I am not. But I'm saying --

Q. Are you demeaning the Ochsner doctors?

A. There's not a doctor you've had here on

either side who has a screening program or is an expert in screening. I'm the first one who's been here, as far as I know.

I am not demeaning them. You have some very good people on your side and good people on the defense side.

Q. All right. Well, would you share with the jury all of the articles that you've written on screening for smoking-related cancer?
A. I think I could do that tomorrow -- Oh, for what? On smoking --
Q. -- related cancer?
A. Two books, that's not bad for starters.
Q. Two books? Which ones?
A. Stay Well and --
Q. The ones that didn't sell?

MR. WILLIAMS:
Objection, Your Honor.

A. I don't know why you keep bringing that up.
EXAMINATION BY MR. BRUNO:
Q. You tell me that's the basis for your credentials.

MR. WILLIAMS:
Objection, Your Honor.

EXAMINATION BY MR. BRUNO:
Q. Is it not a fact that the fact that it didn't sell --

THE COURT:
Mr. Bruno, I have an objection.
MR. BRUNO:
I'm sorry. I was drowning myself out.
MR. WILLIAMS:
We don't need to come up. It's just the comments, the editorial comments.

THE COURT:
No editorial comments, Mr. Bruno.
MR. BRUNO:
Yes, Your Honor. I apologize.

THE COURT:
We know the rank of his book.

EXAMINATION BY MR. BRUNO:
Q. All right. That's fine, Doctor.

The bottom line, just so we can see where you're coming from, you think you are an expert in screening?

A. I am.
Q. Okay. That's fair.

Now, are you an expert in prevention?

A. I am.
Q. Well, maybe you can share with the jury what you have done to prevent smoking-related diseases.
A. What I have done to prevent smoking-related diseases?
Q. You're in the field; aren't you?
A. Yeah. I urge people not to smoke.
Q. And?
A. And --

Q. That's it?
A. That's what prevention people do.
Q. Okay. What exactly did the defense lawyers ask you to do specifically in this case?
A. They asked me to come and give my views on screening and particularly on this program that was -- that is being presented to the jury, asking the jury to make policy.
Q. When is the first time you saw the class definition?
A. I'm sorry. I can't tell you that because, as you well know, there was another case. I'm not so sure I ever saw it. I certainly saw it within the

last few days, but that's all I remember.
(Whereupon a bench conference is held at this time as follows:)
MR. WILLIAMS:
Yes, Your Honor?
MR. BRUNO:
Yes, Judge?
THE COURT:
I hope he's been told not to mention West Virginia or the jury verdict in West Virginia. I'm worried to death that he's going to blurt it. He blurts a lot.
MR. WILLIAMS:
Okay, Judge. I'll --
THE COURT:
I don't know how to prevent that.
MR. WILLIAMS:
I'll talk to him.
THE COURT:
I'm not going to tell him, but --
MR. LONG:
How much longer are you going to go today?
THE COURT:
I don't want him to talk about -- to mention the other case.
MR. WILLIAMS:
I think he was asked, but --
THE COURT:
He was.
And I can envision him saying, "Oh, yeah, when I testified in West Virginia...."

MR. WILLIAMS:
I'll talk to him when we recess.
THE COURT:
I think it's worth recessing for today to make sure that that doesn't happen.
MR. WILLIAMS:
Okay. I'll do that. I'll do that, Your Honor. I agree.
THE COURT:
Okay. We're going to do that right now.
MR. BRUNO:

Can I ask just one more question, Judge? I want to confirm that he never saw the class definition until a few days ago in this case.
THE COURT:
Just ask him that question.
MR. BRUNO:
Yes.
THE COURT:
And limit -- Be very emphatic about this case only.
MR. BRUNO:
Yes, I will.
(Whereupon the bench conference is concluded at this time.)
MR. BRUNO:
One more question for the day, Doctor.
I want to be very emphatic and very clear about this pursuant to The Court's instruction to me.
MR. RUSS HERMAN:

I'm sorry, Your Honor. Would you excuse us just one second, Your Honor, please?
(Whereupon a discussion was held off the record.)
MR. RUSS HERMAN:
All right. Thank you.
EXAMINATION BY MR. BRUNO:
Q. I'm talking about this case to make that very clear to you, okay? The fact is the first time that you ever saw the class definition in this case is within the last couple days?
A. No, I just said I don't have specific memory of when -- I can tell you I definitely saw it then. I may have seen it right at the beginning of this case. I just don't remember.
MR. BRUNO:
No more questions today, Judge.
THE COURT:
We're going to recess for today, ladies and gentlemen. 9:30 tomorrow morning. Be on time. Thank you.
(Whereupon the jury is excused at this time.)
THE COURT:
You can step down.
THE WITNESS:
Okay.
THE COURT:
Let the record reflect the jury has left the courtroom.
Anything for the record by plaintiffs' counsel?

MR. RUSS HERMAN:
We need to wait until the witness is out of the room, Your Honor.
THE COURT:
Step out of the courtroom, please,

Doctor.
(Whereupon the witness is excused at this time.)
MR. RUSS HERMAN:
May it please The Court --
THE COURT:
Mr. Herman?
MR. RUSS HERMAN:
May it please The Court, I have several things for the record.
First of all, the witness was asked on direct in his credentials about whether he had testified in another medical monitoring case, which is off limits, shouldn't have been asked, shouldn't have been responded to, and there was no way to object to it at the time. And I think it's really a problem.
Secondly, Your Honor, this witness --
MR. WITTMANN:
Can we take them one at a time, Judge, so we can respond? Could we take them one at a time so we can respond?
THE COURT:
Okay. One at a time.
MR. WITTMANN:
I don't think there's any prohibition against asking about other cases.

THE COURT:
No, but we have -- The last sidebar was my cautioning counsel to tell this witness not to blurt, which he is prone to do, about West Virginia and the verdict there. That is a real concern of mine. And that was the last -- that was the subject of the last sidebar.
MR. WITTMANN:
I understand that.
THE COURT:
And we recessed so that he could be told of that prohibition. But you may be correct about other cases. But the West Virginia case is particularly of concern at this point in the trial.
MR. WITTMANN:
I understand.
MR. RUSS HERMAN:
I think it was a coached question and a coached answer. And it was meant to give an implication in the record to which I object.
Secondly, the witness has obviously been coached to introduce an issue before this jury which is prejudicial and which is not in the case.
And we're going to be filing a motion to strike any testimony that these jurors, by implication and direction, aren't going to benefit from medical monitoring and they should.
And the implication is that by this

witness -- and it's a coached definite interrogation with a response -- that since they aren't going to benefit, the class shouldn't benefit.

I think it's outrageous. I think in any other case, if this case had only lasted three days, we would have moved for a mistrial already. And the witness should be instructed and we're going to -- and we will file a formal motion. We believe that it's sanctionable. We also believe that that testimony has to be struck from the record.

Mr. Belasic, you can give your smile but this is a serious matter.

THE COURT:

Mr. Herman, address The Court, not other counsel, please.

MR. RUSS HERMAN:

Yes, Your Honor.

THE COURT:

And limit your comments to the record and to the law.

MR. RUSS HERMAN:

Yes, Your Honor.

The third aspect --

MR. WITTMANN:

May I respond to the second?

The question was posed by Mr. Bruno. If anybody's going to get sanctioned, Mr. Bruno should get sanctioned for raising the subject before the jury.

MR. BRUNO:

I did not raise the subject, Your Honor.

THE COURT:

I will check the record. There's no use arguing that right now.

Mr. Herman?

MR. RUSS HERMAN:

Third, during Dr. Aberle's testimony and prior to the testimony, this issue that the witness testified to was stipulated or ruled out, that is, that the tests, the Japanese tests with regard to how many smokers and nonsmokers were shown to have lung cancer. And now it's brought back into the case with this witness.

MR. LONG:

May I respond to that one, Your Honor?

MR. RUSS HERMAN:

And when it --

THE COURT:

If Mr. Herman is finished.

MR. RUSS HERMAN:

And when it came up, it came up under passive smoking. And it was decided that that issue would not be in the case.

MR. WILLIAMS:

Your Honor, may we respond to that?

THE COURT:
Yes.
MR. LONG:
I've got the Aberle thing, Your Honor.
Mr. Leger and I did have a discussion about that. And The Special Master was

there, and I think we discussed it in your chambers.
And the agreement was that because of the Japanese articles, which did show equal lung cancers picked up on CT screens between smokers and nonsmokers, there was a mention, at least in one of the articles, that the issue of passive smoking wasn't considered.
And we were well-aware of that. And I told Mr. Leger that we were going to use that study; if he then wanted to ask about the issue of passive smoking, that was fine. That was the agreement.
And as to any suggestion that this witness is coachable, I think that's belied by the record.
MR. WILLIAMS:
I will attest to that, number one.
MR. RUSS HERMAN:
Your Honor, I want to make one more comment about that.
MR. WILLIAMS:
I needed to respond to your comment, Mr. Herman.
MR. RUSS HERMAN:
Go right ahead, Counsel.
MR. WILLIAMS:
Your Honor, Dr. Louria, Bourgeois Factor Number 6 concerns a regime of monitoring that would be different than the class is seeking. He has to respond to that. And that is one of the legal issues in the case.

MR. BRUNO:
That wasn't what he's responding to, Judge.
THE COURT:
Anything else, Mr. Herman?
MR. RUSS HERMAN:
Yes, Your Honor.
Your Honor has ruled and the defendants have moved that there be no documents, no discussion, no arguments about ETS or environmental smoke or passive smoking.
What this witness has done is said, in effect, that people that get lung cancer from passive smoking show up equally with people that get it from smoking. And what it's done is interject a false issue into the case that was restricted in limine.
It was improper, it's still improper, and, Your Honor, I think it's very

prejudicial.
MR. WITTMANN:
I see Mr. Herman heard very different testimony than I did, Your Honor.
THE COURT:
I will review this afternoon's testimony when I get it in the morning.
Anything else for the record by plaintiffs' counsel?
Defense counsel, anything for the record?
MR. WILLIAMS:
No, Your Honor, other than the Japanese

studies have been in evidence since Dr. Sartor's testimony.
THE COURT:
Anything else by defendants?
MR. WITTMANN:
Yes, Your Honor. Mr. Copley has something.
MR. COPLEY:
Your Honor, we have provided to plaintiffs a list of the exhibits that we intend to offer into evidence, similar to what the plaintiffs did at the close of their case; that we'd offer them into evidence not in front of the jury, but we would offer them and have the hearings before Your Honor. Very similar to what the plaintiffs did at the close of their case.
I received objections to those exhibits from Mr. Herman today. He suggested that we confer on those exhibits, see if we can reach some understanding on them. And I just wanted to report that to The Court that that matter is still outstanding.
THE COURT:
Do I have that list of exhibits?
MR. COPLEY:
I'm not sure if you do, Your Honor. I'll provide it to you in the morning. I don't know.
MR. RUSS HERMAN:
We're talking about the entire list, not the read list?

MR. COPLEY:
That's correct.
MR. RUSS HERMAN:
Yes, Your Honor, I provided Your Honor with a copy this morning. It's been filed in the record with our objections.
THE COURT:
Okay.
MR. RUSS HERMAN:
And I think I have, for the most part, resolved with counsel, Mr. Sholes, I guess 80 percent of the Norrell objections. And I

think Mr. Sholes can offer those. The ones that are still -- that are without objection, I'm going through those with him right now. And I think we can save some time if we do that.

THE COURT:

We'll deal with that in the morning. Anything else before we recess?

MR. LONG:

One other issue, Your Honor. As you know, Dr. Louria is our last witness. We may have these document issues. But I had discussed with Mr. Herman earlier today. And he said, depending on what Dr. Louria said, that would determine whether you had any rebuttal witnesses to call?

MR. RUSS HERMAN:

That's correct.

MR. LONG:

If they make the decision they're going

to call somebody, the earliest they could let us know so we can get ready for it.

THE COURT:

Okay.

MR. RUSS HERMAN:

Well, I don't know that that's part of the order that this Court has issued. And if we're going to offer impeachment testimony and rebuttal testimony, I don't think we're obligated to give you advance notice. I think we will at such time as we've decided who we're going to call and when we're going to call them.

We would have to provide you, I believe, in fairness documents so you can take a look at them. But as far as identifying the witness, et cetera, I don't know that that's part of the order.

THE COURT:

We'll recess until 9:30 tomorrow.

(Whereupon the proceedings were adjourned at 4:05 o'clock p.m.)

* * * * *

REPORTER'S CERTIFICATE

I, CHERYL FOURNET HUFFMAN, Registered Merit Reporter, in and for the State of Louisiana, as the officer before whom this testimony was taken, do hereby certify that this testimony was reported by me in the stenotype reporting method, was prepared and transcribed by me or under my personal direction and supervision, and is a true and correct transcript to the best of my ability and understanding; that I am not related to counsel or to the parties herein, nor am I otherwise interested in the outcome of this matter.

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